IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6488 OF 1994
With
SPECIAL CIVIL APPLICATION NO. 6550 OF 1994
To
SPECIAL CIVIL APPLICATION NO. 6553 OF 1994
With
SPECIAL CIVIL APPLICATION NO. 5685 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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ISMATBANU WD/O DILAWARHUSEN INAYATHUSEN - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR. K.K. NAIR, MR. ARUN MEHTA for Petitioner(s).
MR. L.R. PUJARI, ASST. GOVERNMENT PLEADER for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/12/2006

COMMON ORAL JUDGMENT

This judgement shall dispose of Special Civil Application Nos.6488/1994, 6550/1994 to 6553/1994,

5685/1994.

2. One Dilawarhusain (since deceased) was the land holder and is the petitioner in Special Civil Application No.6488 of 1994. The petitioners in all other petitions are the purchasers from Dilawarhusain and have purchased the property after 1st April, 1976, that is, the due date.

3. The contention of the petitioner – Dilawarhusain is that no notices were issued to the joint owners of the properties and as his mother and two aunts had some share in the property, without notice to them, the Competent Authority could not pass final order in the matter. It is to be seen that Dilawarhusain had appeared before the Mamlatdar-cum-ALT and stated before the authorities that he was representing the interest of all concerned. During the pendency of the said proceedings, neither the mother nor the aunts of Dilawarhusain ever raised any objection that they were co-owners or their interest could not be represented by Dilawarhusain. After the final orders were made, the appeals were taken to the higher authorities and the said questions were raised. Even at that time, the other alleged co-owners were not joined as parties, nor they came to join the proceedings, nor did they appear before any revenue authorities or Tribunal to contend that the order passed by the

Mamlatdar was bad in law.

4. Dilawarhusain, who made a representation before the Mamlatdar, now raises a plea that the other co-owners ought to have been joined or at least some notice should have been issued to them.

5. It is trite to say that a person, who is aggrieved because of no notice, would be the person who raises such objection. When Dilawarhusain had stated before the authorities that he would represent the interest of the other alleged co-owners, then, he himself cannot be allowed to say that the proceedings were bad. If Dilawarhusain was of the opinion that the notices ought to have been issued to other co-owners, then, he should have so stated before the Mamlatdar.

6. The petition at the instance of Dilawarhusain is misconceived. It deserves to and is, accordingly, dismissed.

7. So far as the petitions at the instance of the purchasers are concerned, it is nobody's case that the sales were made before the appointed day or before the due date. The moment a person enters into the shoes of the holder after 1st April, 1976, he, in fact, purchases a

litigation or enters into a litigation. Such person if was not in existence on the date of the enforcement of the Act, no notice to such person was necessary. He sails or sinks with the last holder.

8. As the petition of Dilawarhusain is being dismissed, no relief can be granted in favour of these persons. All the petitions are dismissed. Rule is discharged. No costs.

[R.S.Garg, J.]

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